

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17846 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMESHBHAI SOMABHAI MISTRY

Versus

K.S.GILL - APPELLATE AUTHORITY OF PAYMENT OF GRATUITY ACT

Appearance:

1. Special Civil Application No. 17846 of 2003
MR PH PATHAK for Petitioner No. 1
Mr.Amit M.Kotak, Asst.GOVERNMENT PLEADER for Respondent No. 1
MR KM PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 09/03/2004

ORAL JUDGEMENT

Rule. Mr.Amit Kotak, Ld.AGP appears and waives

service of rule on behalf of respondent No.1 and Mr.K.M.Patel appears and waives service of rule for respondent No.2. With consent of learned advocates for parties matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner was working with the respondent No.2 and his services came to be terminated. The petitioner has challenged the legality and validity of the termination order by raising dispute under I.D.Act and the dispute was ultimately referred to the labour court for adjudication being Ref.No.576/01 and the same is pending. However, pending the said reference the petitioner has moved application to the Controlling authority under the Payment of Gratuity Act (hereinafter referred to as "the Act") for claiming amount of gratuity for the period during which he actually worked and until the date of termination. The Controlling authority under the Act found that the petitioner has worked for 16 years and therefore in any case he would be entitled for the amount of gratuity and therefore accordingly ordered for the payment of gratuity amounting to Rs.31,200/- and the authority has also ordered for interest at the rate of 12% p.a. The respondent No.2 preferred appeal before the appellate authority being Gratuity Appeal No.40/02. The appellate authority found that since the termination is challenged by raising dispute under I.D.Act the relationship of employer and employee continues and therefore termination can not be said to be effective and the petitioner would not be entitled to gratuity and therefore the appeal was allowed accordingly. It is under these circumstances the petitioner approached this court.

3. Having heard Mr.Pathak for the petitioner, and Mr.Patel for the respondent No.2, it appears that there is consensus amongst learned counsel for the petitioner and the respondent No.2 that without prejudice to the rights and contentions of both sides that pending reference before the labour court the petitioner may be allowed to receive the amount of Rs.31,200/- and so far as the interest at the rate of 12% p.a. is concerned it is agreed by the learned counsel for both sides that the payment may be deferred until the outcome of the proceedings before the labour court.

4. In view of the above consensus arrived at between the learned counsel for both sides I find that no reasons are required to be recorded at this stage and the question regarding the liability to pay the gratuity in a matter where dispute is raised against the termination

under I.D.Act shall remain open. Hence, I find that the following directions shall meet with the ends of justice:

(i) The petitioner shall be allowed to withdraw the amount of Rs.31,200/- lying with the appellate authority under the Act and the said amount shall be paid to the petitioner by A/C payee cheque.

(ii) The liability to make payment of interest at the rate of 12% p.a. shall stand deferred until the outcome of Ref.No.576/01 and in the event the petitioner fails in the reference the payment of interest shall be made by the respondent No.2 to the petitioner within a period of two months from the date of decision of the labour court.

It is clarified that the amount of gratuity which is permitted to be withdraw by the petitioner shall be subject to further adjustment in case the petitioner succeeds in the proceedings before the labour court.

5. Petition is disposed of in terms of aforesaid directions. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

9.3.04 (JAYANT PATEL, J)